

AB 982 Public Advisory Group

Meeting Held September 13-15, 2000

The Windsor Room
The Bristol Court Hotel
1055 First Avenue
San Diego, CA

Meeting Summary

September 13, 2000

Convene Meeting: Co-chairs Craig Johns and David Beckman convened the meeting at 10:03 a.m.

Art Baggett, Chair of the State Water Resources Control Board (SWRCB), welcomed the Public Advisory Group (PAG) members. Mr. Baggett distributed a letter from Governor Gray Davis to the Alliance for Water Quality in which the Governor emphasized the important role of the Public Advisory Group. Mr. Baggett also discussed the reports that the SWRCB will submit to the Governor's Office (Ambient Monitoring; Structure and Effectiveness of Total Maximum Daily Load (TMDL) program), noting that he has requested an extension for submitting the TMDL report. He also explained why the SWRCB's report had to be separate from the PAG's two reports.

Summary of August 11, 2000 meeting: A few amendments were made to the Summary, which was then approved by consensus. The revised Summary will be made available to PAG members.

Revised Public Advisory Group Workplan: The Co-chairs reviewed the revised workplan. One concern had to do with whether PAG could see the SWRCB's TMDL report before it went to the Legislature so as to possibly modify their report. Mr. Baggett explained that there is a very small "window" between the time the Governor's Office approves a report and when it goes to the Legislature. He indicated he would see if it was possible to get a one-week window so PAG could have a little time to view the report. Following discussion there was consensus agreement to move forward with the steps outlined in the workplan.

Issue: Implementation plan to achieve pollutant reductions

Since PAG had not addressed this issue in previous meetings it was agreed that time would be spent understanding the perspectives from the environmental and regulated community's perspectives. Later in the agenda, the discussion points were modified and consensus points were sought. Several discussion points were generated:

1. The Implementation Plan is an essential part of the TMDL process.
2. The Implementation Plan should be a formal written document that should be adopted by a Regional Board when they adopt the corresponding TMDL.
3. The Implementation Plan is the blueprint which governs actions by all contributing sources to meet TMDL targets.
4. Implementation Plans should assign reduction responsibility equitably amongst all sources or categories of sources of pollutants consistent with the Clean Water Act.
5. A phased process which includes interim milestones and targets for load reductions may be established by the Regional Board.
6. The Regional Board should implement the plan consistent with all other state authorities, including the statutory and regulatory responsibilities of other state agencies and boards. Such implementation should also be consistent with the Regional Board's authorities, including, but not limited to: (1) issuance of waste discharge requirements; or (2) compliance with the State's Nonpoint Source Management Plan, which includes the three-tiered process of nonregulatory implementation of best management practices, and the adoption and enforcement of waste discharge requirements that will require the implementation of best management practices; or (3) requiring or encouraging, as appropriate, BMPs for municipal stormwater in accordance with SWRCB Orders, and for industrial and construction activities in accordance with SWRCB Orders.
7. High consensus that "equity" is a factor in allocations.
8. High consensus that "timeliness" and "certainty" are factors in allocations. Certainty means that proposed action will result in load reduction.
9. In allocating Load Allocations/Waste Load Allocations to achieve TMDL goals, Regional Boards should consider (or should balance) equity in allocation as well as timelines and certainty in meeting water quality goals.
10. Phased implementation is appropriate, but phased targets are not.
11. Couple technical TMDL steps and Implementation Plan. Do them at the same time, but it should not slow down the TMDL development. Would decouple if it would slow down the TMDL development process. The goal is to couple.
12. Agriculture will have difficulty with coupling TMDL development with implementation (because of USEPA role).
13. Don't give USEPA a role in approving the Implementation Plan.

Approach for developing the report on TMDLs: Steve Ekstrom described the procedure to be used for the remainder of the three-day meeting. For each TMDL issue, PAG would read the accompanying issue paper; then each community would have up to five minutes to present its perspective on the issue; facilitated dialogue would follow; and consensus points would be sought.

Issue: Listing Sites on the Section 303(d) List

Discussion Points

1. The State should err on the side of protection in listing.
2. Use all relevant available data to list. Don't make it high science.
3. Use information that is available.
4. The State should do a better job managing information.
5. Listing needs to be more rigorous in what is listed.
6. Regional Boards need to look at existing data and review the quality assurance on the data.
7. Need early warning criteria (screening criteria) to evaluate narrative standards.
8. Consistent criteria are needed for listing.
9. The State needs a better link to monitoring efforts.
10. The State needs to develop listing and delisting processes at the same time.
11. Listing Policy should provide for listing of each water quality limited segment: (A) What objective is exceeded, (B) Source of data used to list, and (C) Statement of how narrative water quality objective was translated or interpreted.
12. Presently waterbodies are either on or off the 303(d) list. The State needs a multiple component listing process where the State has monitoring information. Waterbodies could be listed on an impairment list, a non-impairment list, and a watch list.
13. There needs to be a means to identify waters where you know a problem exists, even if you can't prove it.

Consensus Points

1. The State Water Resources Control Board should formally adopt a Policy, and a means to implement the Policy, for the Regional Water Quality Control Boards on what constitutes reasonable minimum acceptable credible information. The Policy should also include the methods for determining whether to list or delist water segments on the Section 303(d) list consistent with Federal law.
2. The State Water Resources Control Board should formally adopt a Policy to maximize the Regional Water Quality Control Boards consideration of existing data during the 303(d) process.

Issue: Appropriate Time Periods for Completing TMDLs

Discussion Points

1. Long timeframes in the new TMDL rule are too long.
2. Discussions were held on TMDL groupings (addressing multiple drainages in one TMDL) so TMDLs can be done more quickly. There were objections to this idea.

Consensus Points

1. TMDLs should be established and implemented in accordance with the Clean Water Act, and where applicable, the Porter Cologne Water Quality Control Act and other relevant state and federal laws.
2. State and Regional Boards should accelerate the development and implementation of high priority TMDLs and the legislature should provide adequate funding to accomplish that goal.
3. PAG finds that there are inadequate resources for the state to fulfill its obligation under the TMDL program. Therefore, PAG recommends there be adequate resources for the development and implementation of effective TMDLs statewide. Further, PAG recommends that the Regional Boards assess and request resource needs for an adequate 303(d) listing process and TMDL development/implementation through the State Board from the Legislature.
4. Regional Water Quality Control Boards must maintain active oversight over TMDL development sufficient to assure unbiased technical assessment.
5. The PAG encourages the RWQCBs to consider TMDL development when approving Supplemental Environmental Projects (SEPs) not otherwise legally required of dischargers.

6. The SWRCB and RWQCBs should allocate adequate resources and staff positions to develop and maintain appropriate TMDL expertise in-house.
7. The SWRCB and RWQCBs need an efficient process for acquisition and retention of necessary scientific and technical expertise.
8. The SWRCB should establish an integrated, complementary and not conflicting approach to implement the State's Section 303(d) responsibilities and to attain water quality standards.
9. Other way to assist in completing TMDLs more quickly:
 - A. Training (such as EPA's Water Quality Academy).
 - B. "Tech Centers" (which would allow RWQCBs to share information and approaches), remove the SWRCB from the TMDL approval list.
 - C. "Strike forces" or teams of SWRCB staff with specific expertise (e.g., nutrients, metals, sedimentation, etc.) that could address TMDL development in Regions.
 - D. Bring in staff from other agencies to assist in TMDL development (e.g., on pesticide issues).
 - E. Start some difficult TMDLs early as opposed to tackling the easy ones only at first (makes schedule more realistic).
 - F. Send completed TMDLs to OAL and EPA unless there is an appeal (this would require a change in the Water Code). If an appeal is requested, the appeal hearing is mandatory.
 - G. Group related pollutants to expedite TMDL technical work (e.g., working on multiple pollutants in a waterbody).

Issue: Confirmation of Impairment

Discussion Points

1. There is no role for confirmation of impairment in a system that is working.
2. It should part of the process and not an extra step.
3. The SWRCB should develop specific guidance on TMDL problem statements.
4. There should be an "off ramp" (there is no need to complete the TMDL) if the data show there is no problem.

5. Make sure the problem statement is correct (not as a confirmation of impairment but as a delisting issue).
6. The water quality impairment among other things should be described in the problem statement.
7. Water quality impairment should be reviewed during the development of the problem statement.
8. Range of Considerations:
 - A. If the data are old, make sure the impairment is still there.
 - B. If the listing is based on a small amount of information, reaffirm the problem in the problem statement.
 - C. The problem statement should substantiate/discuss the water quality impairment determination.
 - D. No confirmation of impairment is appropriate or necessary.
9. Need clear, consistent listing criteria Policy in the future. The Policy should contain pre-TMDL delisting criteria to allow the regulated and environmental communities to evaluate the existence of the water quality problem.
10. The TMDL process is established in the CWA and cannot be used for all purposes. The TMDL process is separate from other processes such as triennial review, site-specific objectives, and use attainability analysis.

Consensus Points

None.

Public Comment: Members of the public were asked to comment. None chose to do so.

Adjourn: The meeting was adjourned at 5:00 p.m.

September 14, 2000

Convene Meeting: Co-chairs Craig Johns and David Beckman re-convened the meeting at 9:00 a.m.

Board Member Mary Jane Forster welcomed the group.

Issue: Stakeholder and Technical Advisory Group; Public Participation

Discussion Points

1. Use appropriate stakeholder process (1-2 meetings).
2. Complexity of TMDLs requires input of interested parties (but stakeholder consensus not required or frequent group meetings are not required).
3. Stakeholder process could be based on CEQA approach.
4. Proposal: The Boards would take comments on a scoping document on the TMDL, then the Board would develop and then take comment on the actual TMDL.
5. Stakeholder processes have a strong “public outreach” benefit. Stakeholder processes can be misused, can be inequitable, and can be inefficient and subversive.
6. Favor specific targeted opportunity to be heard (limited resources by some stakeholders to participate).
7. Regional Board should conduct initial scoping and they should decide the need for an intensive stakeholder process.
8. The Regional Boards needs to have restrictions with respect to timelines. There should be a limited process that meets timelines and deadlines.
9. The Regional Boards need to be open to any and all information that accessible. TMDLs are living documents that can integrate new information as it comes up in the development and implementation phases.

Consensus Points

1. Develop a mechanism, including funding, to encourage and maintain balanced stakeholder representation, and assure that stakeholders are afforded the opportunity to participate meaningfully, in accordance with TMDL deadlines.
2. Recommended framework for TMDL development should include opportunities for public input for new listing, for scoping of the TMDL, on the draft TMDL, and on final adoption.
3. TMDLs are living documents; Regional Boards may incorporate information at any time.
4. Regional Boards should be open to input during the TMDL process.

5. In certain circumstances, and where deemed appropriate by the Regional Board, the process may be modified to allow for expanded or diminished public participation.
6. The Regional Board should publish schedules for the start of stakeholder participation process.
7. TMDLs need not be based on consensus, but everyone needs to be heard.
8. Regional Boards should consider education and outreach as part of TMDL development and implementation. Public outreach and education are important aspects in issue resolution and attaining water quality standards.

Issue: Implementation Plan to Achieve Pollutant Reductions

Discussion Points

1. Could use stakeholder process during implementation phase.
2. Adaptive Management should be an integral component during TMDL development.
3. The Regional Board should implement the plan consistent with all other state authorities, including the statutory and regulatory responsibilities of other state agencies and boards. Such implementation should also be consistent with the Regional Board's authorities, including, but not limited to: (1) issuance of waste discharge requirements; or (2) compliance with the State's Nonpoint Source Management Plan, which includes the three-tiered process of nonregulatory implementation of best management practices, and the adoption and enforcement of waste discharge requirements that will require the implementation of best management practices; or (3) requiring or encouraging, as appropriate, BMPs for municipal stormwater in accordance with SWRCB Orders, and for industrial and construction activities in accordance with SWRCB Orders.
4. Could use stakeholder process during implementation phase.

Consensus Points

1. The Implementation Plan is an essential part of the TMDL Process.
2. The Implementation Plan should be a formal written document that should be adopted by a Regional Board when they adopt the corresponding TMDL
3. The Implementation Plan is the blueprint which governs actions by all contributing sources to meet TMDL targets.

4. The implementation plan may include interim milestones and targets for load reductions.
5. Implementation plans should identify specific control and/or management actions for all sources or categories of sources of pollutants consistent with the Clean Water Act and, where applicable, the Porter Cologne Water Quality Control Act.
6. The Regional Boards shall seek collaboration with other government agencies with applicable authorities as needed or required to ensure the efficient implementation of the TMDL.
7. The Regional Boards need to carefully lay out schedules to get TMDLs completed and implemented.

Issue: Offset Programs

Consensus Points

There are a range of views on offsets from cautiously optimistic to fundamentally opposed. However, the PAG agrees that in order to evaluate an offset program at least the following need to be addressed:

Legal and liability issues.

Need a way to identify the amount of load allocations (load reduction) to be credited to a specific offset.

Take into account site-specific characteristics of the waterbody.

Take into account the specific characteristics of the pollutant.

Need a way to measure process in load reduction (accountability).

Environmental justice implications.

Location of the source.

Timing of the reductions.

Address whether they are mandatory or voluntary.

On-going responsibility and maintenance of the reductions.

What is an appropriate offset ratio?

Agency management, including funding for the program.

Type of source (point or nonpoint) needs to be considered.

Whether pollutant reductions that are otherwise required or would otherwise occur should be the subject of offsets, and how to define these terms.

Issue: Role of Science in Preparing TMDLs

Discussion Points

To the extent practicable the TMDL process should be developed with a solid scientific and technical foundation.

Cannot compromise good scientific peer review process though.

Good science is the solid foundation for TMDLs. As the science gets better, uncertainty goes down.

Adaptive management allows for mid-course corrections.

1. High agreement

- A. Adaptive management is a mechanism to allow additional “science” to enter the system or process.
- B. There needs to be a sound base of information in decision making.

2. Moderate agreement

- A. Use best science readily available.
- B. Zero discharge may not solve perceived problems.

3. Low Agreement

- A. New science should be developed to the extent deadlines are met.
- B. Assess what science is being used.

4. Other points

- A. We do not need ultimate science, just adequate science.
- B. If we do not understand science well enough, discharging should not be allowed.

Consensus Point

Encourage, where appropriate, early external peer review.

Public Comment: Members of the public were asked to comment. None chose to do so. PAG member Alan Levine distributed aerial photos of the Garcia River watershed and provided a brief explanation.

Adjourn: The meeting was adjourned at 5:00 p.m.

September 15, 2000

Convene Meeting: Co-chairs Craig Johns and David Beckman re-convened the meeting at 9:00 a.m.

Board Member Pete Silva welcomed the group.

Issue: TMDL Targets, Wasteload Allocations, Load Allocations

Discussion Points

Explain setting a target based on a narrative standard.

Implementation Plans should assign specific reduction responsibilities amongst all sources or categories of sources of pollutants consistent with the Clean Water Act.

There is an absolute requirement for considering economics in the implementation of agriculture program and water quality objectives.

“Economics” needs to be considered in development of TMDLs.

“Economics” does not/may not be considered.

High consensus that “equity” is a factor in allocations.

High consensus that “timeliness” and “certainty” are factors in allocations. Certainty means that proposed action will result in load reduction.

In allocating Load Allocations/waste Load Allocations to achieve TMDL goals, Regional Boards should consider (or should balance) equity in allocation as well as timelines and certainty in meeting water quality goals.

Range of Options:

1. Do not consider economics (to do so would make adoption of TMDLs too slow, not a part of the Clean Water Act process for developing TMDLs).
2. Reconsider adopted water quality objectives with respect to Water Code Section 13241.
3. Consider economics (Section 13241) for water quality objectives when the TMDL target is developed.
4. Consider economics in the development of targets, waste load allocations, and load allocations.
5. Consider economics at the implementation stage. No economics analysis in TMDL (if to be considered at all, belongs at end of process).

Consensus Points

TMDLs may, in some instances, involve cross-media sources of pollution which will need to be controlled in order to implement the TMDL. CalEPA should design and implement a specific mechanism that assures that any TMDL allocation to a source outside the jurisdiction of the Regional Board are adequately enforced and implemented.

Issue: Legacy Contributions of Pollutant Loads

Discussion Points

Concern that legacy pollutants will be allocated to those of the regulated community that are left.

PAG discussions should continue (after November 2000) with respect to legacy contribution outside the Board's authority.

It is very important to address legacy sources of pollution or contamination in the Regional Board's decision process in developing waste load allocations and load allocations.

Range of Options:

1. Include legacy contamination in establishing waste load allocations and load allocations (split load among nonpoint source/point source).
2. Address legacy contamination as a separate source. If responsible discharger is unknown, government agencies should address the problem.

Consensus Points

None.

Next meeting: PAG members discussed how much time would be needed at the October meeting to review PAG's TMDL report to be produced by a subcommittee (Larson, Dunham, Tucker, Beckman, Resnik and Mintz). It was decided that PAG will meet on October 26th and 27th (Thursday/Friday) to review and discuss the report. This meeting will be held in San Francisco – Co-chair Craig Johns will help identify a location. PAG will meet again on November 9 (Thursday) in Sacramento for a final review. (NOTE: The PAG will make a TMDL presentation to the SWRCB on November 16.)

PAG Report on Ambient Monitoring: Members received a draft report the previous evening to review for today's discussion. Members agreed the report was an excellent start, and then developed a timeline for finalizing the report:

1. By September 21, Linda Sheehan will develop a list of key points that will be used as the basis for the presentation to the Board on October 4th.
2. The subcommittee (Bolland, Paradies, Sheehan, Meyers, Conway and Scanlin) will discuss these key points, and perhaps other items, with staff prior to October 4th.
3. The subcommittee will produce its full report by September 21st, distribute it to PAG members for review, and will finalize the report by September 28th.

All PAG members are encouraged to attend the October 4th Board Workshop.

Public Comment: Members of the public were asked to comment. None chose to do so.

Adjourn: The meeting was adjourned at noon.